

**IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL.**

Writ Petition No. 1228 (S/S) 2001

(Old no. 45434/1999)

1. Mahesh Chandra S/o late Tula Ram,
2. Smt. Satyawati @ Saraswati W/o late Tula Ram,
Both r/o village Kheriya, Post Office Madhan,
District Mainpuri. Petitioners.

Versus

1. The Executive Engineer,
Vidyut Vitran Khand, Haldwani, Nainital,
2. The Superintending Engineer,
Vidyut Vitran Khand, Uttar Pradesh State Electricity Board,
Rudrapur, District Udham Singh Nagar,
3. Chief Zonal Engineer,
Uttar Pradesh State Electricity Board,
Hill Region, District Nainital,
4. The Chief Engineer,
Uttar Pradesh State Electricity Board,
4, Vikramaditya Marg, Lucknow,
5. The Chairman,
Uttar Pradesh State Electricity Board,
Shakti Bhawan, Ashoka Marg, Lucknow,
6. Sri Rakesh Chandra @ Raghvendra,
S/o late Tula Ram, R/o Kheriya,
P.O. Madhan (Jyoti), Tehsil and District Mainpuri,
At present residing at M.L. Singhal Shakti Nawabi Road,
Shakti Sadan Wali Gali, Haldwani,
District Nainital. Respondents.

Sri Ram Ji Srivastava, learned Counsel for the petitioners,
Sri B.D. Upadhyay, learned counsel for respondent nos. 1 to 5,
Sri Gopal Narayan, learned counsel for respondent no.6.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Ram Ji Srivastava, learned counsel for the petitioners, Sri B.D. Upadhyay, learned counsel for respondent nos. 1 to 5 and Sri Gopal Narayan, learned counsel for respondent no. 6.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

- i. Issue a writ, order or direction in the nature of mandamus commanding to the respondents to appoint the petitioner no. 1 under Dying-in-Harness Rule on any post preferably on the post of Tracer on compassionate ground,
- ii. Issue any other suitable writ, order or direction as this Hon'ble Court may deems fit and proper in the circumstances of the case;
- iii. Award costs of the writ petition to the petitioner,
- iv. Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the impugned order dated 10.09.2003 (annexure no. 23 to this writ petition) passed by Executive Engineer, Electricity Distribution Division, Uttaranchal Power Corporation Ltd. Kathgodam, District Nainital,
- v. Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the appointment order of respondent no. 6 Rakesh Chandra, issued by the respondents.

Briefly stated, that the father of the petitioner no.1 and husband of petitioner no. 2, namely Tula Ram, was working with the respondents' establishment as Petrol Man died in harness on 23.01.1998 leaving behind his widow, four sons and three daughters. After the death of Sri Tula Ram, his son- the petitioner applied for employment under Dying-in-Harness Rules, however no heed was paid by the respondents. Consequently, he filed writ petition no. 41502/1998 which was disposed of by the Allahabad High Court on 16.12.1998 with the directions to the respondents to take decision on the

representation of the petitioner within a period of two months. When the respondents did not comply the order dated 16.12.1998 passed by the Allahabad High Court then the petitioner moved Contempt Application no. 1598 of 1999 and the Allahabad High Court issued notices to the respondents to show cause as to why a Contempt Proceeding be not started against them for the alleged violation of Court's order dated 16.12.1998 passed in writ petition no. 41502 of 1998.

Counsel for the respondent no. 6 has submitted that another writ petition was filed by another son of the deceased, namely Sri Rakesh Chandra for a direction to respondents to provide appointment to him on compassionate ground and the Allahabad High Court also disposed of the petition with a direction to the respondents to decide the representation of the petitioner.

The respondent's Department provided appointment to Sri Rakesh Chandra i.e. the respondent no. 6 on compassionate ground, vide order dated 10.09.2002 and the representation of the present petitioner was rejected by the Department. The petitioner moved amendment application and has also challenged that order, however copy of the order which the petitioner wants to challenge by way of amendment application, has not been filed alongwith the amendment application. Thus, there is no order available to the Court, by which the representation of the petitioner was rejected, and Sri Rakesh Chandra was provided appointment.

Learned counsel for respondent no. 6 has submitted that representation of the petitioner was rejected by the Department on the ground that he had become overage and the respondent

no. 6 was provided appointment; moreover the services of the respondent no. 6 have been confirmed by the Department vide order dated 13.09.2006. He has also placed reliance on the judgment of **Hon'ble the Apex Court in the case of Union of India and others vs. K.P. Tiwari, reported in 2003 Supreme Court Cases (Labour and Service), page 1233** wherein Hon'ble the Apex Court has held that the person appointed under compassionate ground and if the appointee continuing in service for a long period of over five years, in such cases interference by the Court would uproot the appointee from his livelihood and would not be appropriate.

It is not disputed that the petitioner was 44 years' old when the application of the petitioner for appointment on compassionate ground was rejected by the Department vide order dated 10.09.2002. Considering this factual aspect, the Department has provided appointment to another son of the deceased, namely Sri Rakesh Chandra, on compassionate ground. Sri Rakesh Chandra has been given appointment on 10.09.2002 and he has already been confirmed by the Department on the post held by him vide order dated 13.09.2006. In these circumstances, it would not be proper for the Court to interfere with the appointment of Sri Rakesh Chandra, further the copy of the order providing appointment to Rakesh Chandra is not available in the record and the Court cannot quash the order, which is not in the record.

In these circumstances, the writ petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.)

February 23, 2007:

NCM: